

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CECILIA SHORT,

Plaintiff,

vs.

Case No. _____

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY,

Defendant.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, The Lincoln National Life Insurance Company (“Lincoln”), hereby files this Notice of Removal of this case from the Second Judicial District Court, Bernalillo County, New Mexico, Docket No. D-202-CV-2017-01670, where it is currently pending, to the United States District Court, District of New Mexico. This case is removable pursuant to 28 U.S.C. § 1331, in that Plaintiff’s claims, in whole or in part, arise under the Employee Retirement Income Security Act of 1974 as amended (“ERISA”), 29 U.S.C. § 1001, *et. seq.*, thus supplying federal question jurisdiction.

Lincoln respectfully shows the Court as follows:

1. Plaintiff instituted this civil action in the Second Judicial District Court, Bernalillo County, New Mexico on or about March 9, 2017.
2. Lincoln received a Summons and Complaint via the Superintendent of Insurance on March 16, 2017, by certified mail. A copy is attached hereto as Exhibit 1.

3. Pursuant to Rule 6(a) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after receipt of the initial pleading on which the aforesaid action is based.

4. The United States District Court for the District of New Mexico is the federal judicial district embracing the Second Judicial District Court, Bernalillo County, New Mexico, where this suit was originally filed. Venue is therefore proper under 28 U.S.C. §§ 109 and 1441(a).

FEDERAL QUESTION

5. Plaintiff's claims concern disability benefits under a Policy of disability insurance provided by Lincoln to Plaintiff's former employer ("the Policy"). *See* Complaint at ¶¶ 6, 9. The Policy is part of an employee welfare benefits plan as defined by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1002(1). Indeed, the Complaint states on its face that Plaintiff seeks benefits under an ERISA Plan. *See* Complaint at ¶¶ 1, 5.

6. Plaintiff is claiming entitlement to ERISA-regulated benefits. *See id.* ERISA preempts any state law claims alleged by Plaintiff and provides exclusive remedies for resolution of claims by employee benefit plan participants and beneficiaries relating to an ERISA plan. *See* 29 U.S.C. § 1132(a)(1)(B); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987). Such claims are removable under 28 U.S.C. § 1441(b) as an action arising under federal law even when the ERISA-related nature of the action does not appear on the face of a complaint. *See* *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987).

7. Accordingly, this action is one over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e) in that Plaintiff's claims arise under an

ERISA-governed benefit plan and Plaintiff's claims come within the scope of ERISA § 502(a), 29 U.S.C. § 1132(a).

8. Pursuant to 29 U.S.C. §§ 1132(e)(1) and (f) and 28 U.S.C. §§ 1331, 1441(b), the District Courts of the United States have original and/or exclusive jurisdiction over such claims without respect to the amount in controversy or the citizenship of the parties and may be removed to this Court.

MISCELLANEOUS

9. A copy of this Notice of Removal is being filed with the Second Judicial District Court, Bernalillo County, New Mexico as provided by law, and written notice is being sent to Plaintiff's counsel. A copy of the cover letter and Notice of Filing Notice of Removal are attached hereto as Exhibit 2.

10. The prerequisites for removal under 28 U.S.C. § 1441 have been met.

11. The allegations of this Notice are true and correct and this cause is removable to the United States District Court for the District of New Mexico.

12. If any question arises as to the propriety of the removal of this action, Lincoln respectfully requests the opportunity to present a brief in support of its position that this cause is removable.

WHEREFORE, Lincoln, by and through its counsel, and through the filing of this Notice of Removal, the giving of written notice thereof to Plaintiff, and the filing of a copy of this Notice of Removal with the clerk of the Second Judicial District Court, Bernalillo County, New Mexico, effects the removal of said civil action to this Honorable Court.

Dated: April 13, 2017

Respectfully submitted,

STELZNER, WINTER, WARBURTON
FLORES, SANCHEZ & DAWES, P.A.
302 Eighth Street NW, Suite 200
P. O. Box 528
Albuquerque, NM 87103
(505) 938-7770

BY: /s/ Robert P. Warburton
ROBERT P. WARBURTON
*Attorneys for Defendant The Lincoln National
Life Insurance Co.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Notice of Removal** was served by U.S. Mail, postage pre-paid, this 13th day of April, 2017 on the following counsel:

Donald D. Vigil
DONALD D. VIGIL, P.C.
100 Fourteenth St. SW
Albuquerque, NM 87102
Attorney for Plaintiff

/s/ Robert P. Warburton
Robert P. Warburton